CLERK'S COPY.

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903.~~ 1904.

No. ~~276.~~ 96.

THE UNITED STATES, APPELLANT,

vs.

WALTER S. CROSLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 25, 1903.

(19027)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1903.

## No. 376.

THE UNITED STATES, APPELLANT,

vs.

WALTER S. CROSLEY.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.


| | Original. | Print. |
|---|---|---|
| Caption | 1 | 1 |
| Petition filed | 1 | 1 |
| Amended petition | 2 | 1 |
| Request for findings | 5 | 3 |
| Brief for claimant | 5 | 3 |
| Report of Navy Department | 10 | 5 |
| Report of Treasury Department | 10 | 6 |
| Traverse | 11 | 6 |
| Findings of fact | 12 | 6 |
| Conclusion of law | 12 | 7 |
| Opinion | 12 | 7 |
| Judgment | 15 | 9 |
| Application for appeal | 16 | 10 |
| Order allowing appeal | 16 | 10 |
| Clerk's certificate | 17 | 10 |


3923—03

1 Court of Claims.

WALTER S. CROSLEY
*vs.*
THE UNITED STATES. } No. 22391.

I. *Petition.*

Claimant's petition in this case was filed October 30, 1900.

On September 11, 1901, the claimant, by leave of court, filed his amended petition in lieu of his original petition, which is as follows:

2 *Amended petition.*

[Filed Sept. 11, 1901, in lieu of original petition filed Oct. 30, 1900.]

*To the honorable the Court of Claims:*

The claimant, Walter S. Crosley, respectfully represents:

1. The claimant entered service in the United States Navy on the 9th day of September, 1889, and on the 1st day of July, 1899, until the 8th day of September, 1900, and thereafter, was a lieutenant, junior grade, in the Navy of the United States and an aid to Rear-Admiral J. C. Watson; that Rear-Admiral Watson was at that time embraced in the nine higher numbers of the grade of rear-admiral and was entitled, under § 1466 of the Revised Statutes, to rank with a major-general in the United States Army.

2. By virtue of the provisions of the act of March 3, 1899, § 13, known as the navy personnel act, the claimant became entitled, on the 1st day of July, 1899, to the pay provided by law for an officer of corresponding rank in the Army.

From the 1st day of July, 1899, to the 8th day of September, 1899, he was entitled to pay at the following annual rate:

3

| | |
|---|---|
| Pay of a first lieutenant in the Army, being the grade corresponding to lieutenant, junior grade, in the Navy, under Revised Statutes, § 1261 | $1,500 |
| Longevity pay under Revised Statutes, § 1262, for second five years of service | 150 |
| Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261 | 200 |
| Mounted pay due under Army Regulations of 1895, paragraph 1301, to "authorized aids duly appointed" | 100 |
| Longevity pay upon the last two items under Revised Statutes, § 1262 | 30 |
| Total | $1,980 |

That from September 9, 1899, to September 8, 1900, he was entitled to pay as follows:

| | |
|---|---|
| Pay of a first lieutenant in the Army under Revised Statutes, § 1261 | $1,500 |
| Longevity pay under Revised Statutes, § 1262, for third five years of service | 300 |
| Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261 | 200 |

| | |
|---|---|
| Mounted pay due under Army Regulations of 1895, paragraph 1301 | $100 |
| Longevity pay on the last two items under Revised Statutes § 1262 | 60 |
| Total | $2,160 |

3. During the whole of the period stated, from July 1, 1899, to September 9, 1900, the claimant was paid at the rate of $1,800 a year, this being for the period from July 1, 1899, to September 8, 1899, the rate of pay granted by Revised Statutes, § 1556, to a lieutenant, junior grade, at sea during his first five years in said rank, and for the period from September 9, 1899, to September 8, 1900, this being also the rate
4 of pay fixed by Revised Statutes, § 1261, for a first lieutenant not mounted, with the longevity increase allowed by Revised Statutes, § 1262, in the third five years of service, without any additional allowance for his service as aid under the statutes and army regulation heretofore set forth.

4. The difference between the pay received by him at the rate of $1,800 a year from July 1 to September 8, 1899, and the pay due him at the rate of $1,980 a year during the same period, is $34; the difference between the pay received by him at $1,800 a year from September 9, 1899, to September 8, 1900, and the pay due him at $2,160 a year for the same period, is $360, making a total of $394 to which he is justly entitled and for which he makes claim.

5. This claim has not been presented to any of the Executive Departments of the Government for the reason that the Comptroller of the Treasury has held that such extra pay can not be recovered.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of three hundred and ninety-four dollars ($394).

GEORGE A. & WM. B. KING,
*Attorneys for Claimant.*

5 DISTRICT OF COLUMBIA, *ss:*

William B. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

WM. B. KING.

Subscribed and sworn to before me this 11th day of September, 1901.

[SEAL.] MARTHA M. BECK,
*Notary Public.*

*Request for findings of fact.*

The claimant, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same as follows:

I.

The claimant entered service in the United States Navy on the 9th day of September, 1889, and from the 1st day of July, 1899, until the 8th day of September, 1900, was a lieutenant, junior grade, in the Navy, and an aid to Rear-Admiral J. C. Watson; Rear-Admiral Watson was at that time one of the nine higher numbers of the grade of rear-admiral and was entitled, under § 1466 of the Revised Statutes, to rank with a major-general in the United States Army. (See report of Navy Department, p. 9.)

II.

During said period claimant was paid at the rate of $1,800 a year. (See report of Treasury Department, p. 9.)

*Brief.*

The claimant, a lieutenant, junior grade, in the United States Navy, was an aid to Rear-Admiral J. C. Watson from July 1, 1899, to September 8, 1900. He claims extra pay for his service.

6 THE STATUTES.

The claim rests upon the terms of the navy personnel act of March 3, 1899 (§ 13, 2 Supp. R. S., 972; 31 Stat. L., 1007), as follows:

"That after June 30th, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

This provision requires an examination of the Army pay in order to find the proper rate of pay for any naval officer. Army pay is fixed by § 1261 of the Revised Statutes, as follows:

"The officers of the Army shall be entitled to the pay herein stated after their respective designations: * * *

"First lieutenant, mounted, sixteen hundred dollars a year.

"First lieutenant, not mounted, fifteen hundred dollars a year. * * *

"Aid to major-general, two hundred dollars a year in addition to pay of his rank."

Sec. 1262 provides for longevity pay as follows:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

The statutes do not define what officers are mounted; that is left to be fixed by Army regulations. Paragraph 1301 of the Army regulations of 1895 is as follows:

"The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below

the rank of major, officers serving with troops of cavalry, officers
7 of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers."

Sec. 1466 of the Revised Statutes fixes the relative rank between officers of the Navy and officers of the Army and gives rear-admirals rank with major-generals, and masters, a title later changed to lieutenant (junior grade), with first lieutenants in the Army.

THE PAY RECEIVED.

The claimant was paid during the whole period at $1,800 a year. This is the rate of pay appropriate to a lieutenant (junior grade) in the Navy at sea during his first five years in that grade (R. S., § 1556); it is also pay of a first lieutenant in the Army in his third five years of service (R. S., §§ 1261, 1262). As the claimant entered the naval service on the 9th day of September, 1899, as shown by the Naval Register, and was appointed a lieutenant (junior grade) on March 3, 1899, he was, during the whole of the period in question, in his first five years in that grade and, up to September 8, 1899, was in his second five years in the service, and from September 9, 1899, in his third five years in the service. His pay at Army rates up to September 8, 1899, would have been but $1,650, being $1,500 as the minimum pay and one longevity increase. He received $1,800, however, under the saving clause of § 13 of the navy personnel act, as follows:

"That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

8 After September 8, 1899, his pay at Army rates would have been $1,800.

THE PAY CLAIMED.

His claim as now made is very accurately set forth in the petition, and consists of the demand for three additional allowances: (1) The special pay granted to an aid to a major-general under Revised Statutes, §1261; (2) the allowance made to such officer under Army Regulations, paragraph 1301, as mounted pay, and (3) longevity increase upon both these amounts.

The purpose of this action is to place the claimant, as an officer of the Navy, in a similar situation to that in which the officers of the Army now stand. The object of §13 of the Navy personnel act is to create an equality between the Army and the Navy (Rogers v. United States, 36 C. Cls.). Equal rank in the naval service is to have equal pay to that granted in the Army.

When an Army officer is appointed an aid to a major-general the law gives him extra pay for it. The principle of equality demands that the same extra pay shall be given to a naval officer appointed to similar duty as an aid to an officer of corresponding rank in the Navy. This increase

of pay given to an aid to a major-general consists of three parts—the fixed annual increase, the allowance as mounted pay, and the longevity increase. Unless all three of these are equally granted to the naval officer he is at a disadvantage as compared to the corresponding grade in the military service.

THE COMPTROLLER'S DECISION.

The Comptroller of the Treasury considered a similar case and took the ground (6 Comp. Dec., 154) that, as the right of a general officer in the Army to aids was a right conferred by special statute, only
9 the aids appointed specifically under those statutes were entitled to the extra pay; that Navy aids were appointed under other authority of law, and consequently were not entitled to the pay granted to aids appointed as provided in the law governing the Army. This view is of an extremely technical character, and overlooks entirely the controlling purpose of the personnel act in granting equal pay to officers of equal rank and duty. If aids to major-generals in the Army are given additional pay for their additional responsibility, then similar officers in the Navy, performing like duty, are to have a like increase. That their selection for this duty is in a somewhat different manner and under a different authority of law is a matter of form and does not affect the substantive right. The principle of equal pay for equal duty being established by law, the courts will look for substantial rather than formal differences to warrant differences in pay.

CONCLUSION.

"The key to the opening of every law is the reason and spirit of the law; it is the 'animus imponentis,' the intention of the lawmaker expressed in the law itself taken as a whole." (Brett v. Brett, 3 Add. Eccl., 210, quoted in Black on Interpretation of Laws, 167.) It is this principle which this court expressed and followed in Rodgers v. United States, 36 C. Cls., in construing this statute. The clear intent of this law is equality between the Army and Navy, and that intent has been violated in the refusal to pay this claimant the sums here claimed. Judgment should be rendered for the claimant for $394.

Attached to this brief are the reports of the Navy and Treasury Departments showing the facts of record upon which the claim is based.

GEORGE A. & WILLIAM B. KING,
*Attorneys for Claimant.*

10 *Report of Navy Department.*

NAVY DEPARTMENT,
*Washington, November 14, 1900.*

SIR: Referring to the call of the Department of Justice, dated the 31st ultimo, in the case of Walter S. Crosley v. The United States, in the Court of Claims, No. 22391, I have the honor to state that it appears from the records that claimant was, during the period from May 16, 1899, until September 8, 1900, a lieutenant (junior grade) in the United States Navy, and served on the staff of Rear-Admiral J. C. Watson, as flag secretary.

A more detailed reply is not made for the reason that it appears from an examination of the petition filed in the case that the matters in controversy relate to the acts of the accounting officers of the Treasury in the adjustment of claimant's pay.

Very respectfully,

J. D. LONG, *Secretary.*

*Report of Treasury Department.*

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE NAVY DEPARTMENT,
*Washington, May 6, 1901.*

WALTER S. CROSLEY
v.
THE UNITED STATES. } 22391.

*The Honorable the Secretary of the Treasury:*

SIR: Replying to the rule of the honorable Court of Claims in the above entitled cause, herewith returned, I have the honor to report that the claimant was paid from July 1, 1899, to September 10, 1900, at $1,800 per annum (after September 9, 1899, his Army and Navy sea pay were the same). From September 11, 1900, to November 6, 1900, he was paid Army shore pay at $1,530 per annum, and from November 7, 1900, to March 31, 1901, he was paid at $1,800 per annum. This rate of pay was the same for sea service under section 1556 Revised Statutes or section 13 of the Navy personnel act.

Respectfully,

JOHN M. EWING, *Acting Auditor.*

11 II. *Traverse filed November 12, 1902.*

In the Court of Claims of the United States, December term, A. D. 1902.

WALTER S. CROSLEY
v.
THE UNITED STATES. } No. 22391.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

L. A. PRADT,
*Assistant Attorney-General.*

12 III. *Findings of fact and conclusion of law, and opinion of the court, filed January 5, 1903.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant entered service in the United States Navy on the 9th day of September, 1889, and from the 1st day of July, 1899, until the

8th day of September, 1900, was a lieutenant, junior grade, in the Navy, and an aid to Rear-Admiral J. C. Watson; Rear-Admiral Watson was at that time one of the nine higher numbers of the grade of rear-admiral, and was entitled under section 1466 of the Revised Statutes to rank with a major-general in the United States Army.

II.

During said period claimant was paid at the rate of $1,800 a year.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of three hundred and ninety-four dollars ($394.00).

HOWRY, J., delivered the opinion of the court:

Plaintiff's claim is for extra pay on account of service rendered as lieutenant, junior grade, in the Navy from July 1, 1899, to September 8, 1900, as an aid to a rear-admiral. He claims the pay granted by section 1261 of the Revised Statutes given to an aid serving as such to a major-general in the Army, and next the mounted pay provided by paragraph 1301 of the Army Regulations.

The act of March 3, 1899 (sec. 13, 2 Supp. R. S., 972; 30 Stats., 1007), provides as follows: "That after June 30, 1899, commissioned officers of the line of the Navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

Section 1098 of the Revised Statutes provides as follows: "Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army."

Army pay is fixed by section 1261 of the Revised Statutes as follows:

"The officers of the Army shall be entitled to the pay herein stated
13 after their respective designations: * * * First lieutenant, mounted, sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year, * * * aid to major-general, two hundred dollars a year, in addition to pay of his rank."

Section 1262 provides for longevity pay as follows:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

In refusing payment the accounting officers have acted upon the opinion of the Comptroller of the Treasury, who, in considering a similar question, has held that as the right of a general officer in the Army to aids is a right conferred by special statute, only the aids specifically appointed under those statutes are entitled to the extra pay; and inasmuch as a naval aid is appointed under other authority of law such naval aid is consequently not entitled to the pay granted to aids appointed as provided in the law governing the Army; that is, that additional pay to aids in the Army granted by section 1261 of the Revised Statutes applies only to those aids provided for in section 1098.

And further, that pay to an aid to a major-general is not pay provided by law "for the officers of corresponding rank in the Army," being pay for duty and not for rank. (6 Comp. Dec., 154.)

Plaintiff was not detailed under the provisions of section 1469. That section authorizes the detail of a line officer to act as the aid or executive of the commanding officer of a vessel of war or naval station, which officer of the line, when not impracticable, is to rank next to the commanding officer. The officer referred to in this statute is the immediate assistant of the commanding officer of a vessel who is usually of rank below a rear-admiral, or of a station. This plaintiff was not that kind of an aid or executive. But he was an aid to a rear-admiral. Such aids are appointed under paragraphs 343 and 345, Naval Regulations of 1895, as follows:

"343. The chief of staff, flag lieutenant, clerk, and aids shall constitute the personal staff of a flag officer."

"345. (1) A flag officer may select any officer of his command to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in article 344.

"(2) He may also, when necessary, select other line officers junior to the flag lieutenant to serve on his personal staff as aids, but shall not assign naval cadets to such duty."

The duties of naval aids provided for in the regulations are regulated by the chief of staff, subject to the flag officer; and such aids are subject to the internal regulations and the routine of the ship; and their duties, except when ordered by the captain of the ship, do not relate to the vessel itself, but are personal to the commanding officer. (Par. 347, Navy Reg.) The duties of aids to general officers in the Army are not prescribed, but such aids are of course subject to the control and direction of the officer upon whose staff they serve. (Pars. 32 to 36, Army Reg.)

From the foregoing it will be seen that the duties of aids to rear-admirals are substantially the same as the duties of aids to generals. In each case the duties are personal to the commanding officers. As the regulations are not drawn in question and no doubt arises as
14 to the authority of the Secretary of the Navy to make the regulations, the appointment of aids to rear-admirals is as much authorized by law as the appointment of aids to generals under statute. Whether the aids are appointed under statute for one arm of the service or under regulations for another the results are the same as far as the character of the service is concerned.

The additional pay to the army officer is in the nature of an allowance. It goes to his rank, depends on rank, and is extra pay for special service. In the case of a naval officer duly appointed aid to a rear-admiral the extra pay is likewise for rank and special service. The Navy personnel act attempted to assimilate the pay, and did so as far as conditions admit of the application of the act. It is not for the courts to add to or take from the act where the pay for a similar service rendered by a naval officer can be assimilated to that of an officer of corresponding rank in the Army.

It is true that if the Secretary of War should assign any number of aids to an officer which he might deem advisable, only the number author-

ized can be allowed the additional compensation provided by law. The appointment and payment of such additional aids would be an enlargement of the statutes providing aids for generals, and a regulation which should undertake to provide for such additional appointments with pay would not be valid.

The Secretary of the Navy does not run counter to the statutes in making regulations providing a personal staff for a rear-admiral. The rank of an officer so assigned being shown to be the same, and the special service being performed in a similar manner, similar pay is the consequence.

The Army regulation gives the pay of mounted officers "to authorized aids duly appointed." But mounted pay is not always synonymous with mounted service, as there may be mounted pay without actual mount. An officer in the Army serving as an aid may sometimes be where, in the performance of duty, he can not be mounted. Again, such an officer may sometimes be where he can be mounted and yet where he is not mounted. An aid to a general doing duty on some small island or at the seat of government either can not use a horse or he may not have one. Nevertheless, the statutes in such cases provide the mounted pay, despite the actual conditions which may prevent the use of a horse in the one case or render unnecessary the keep of a horse in the other. The officer in such cases would only be deprived of the allowance of forage.

The Navy personnel act undertook to establish an equality of pay proper between officers of the Army and officers of the Navy corresponding in rank. There is an incongruity between naval duties and mounted service, and yet the statute has applied the same amount of pay to authorized aids, like those we have been considering, in both branches of the service. The equality of pay fixed by the statute and the application of the equality here more fully appear in another cause, by which this branch of the case must be governed. (Richardson *v.* United States, 38 C. Cls. R., ——.)

Judgment will be entered for plaintiff in the amount set forth in the conclusions of law.

15 IV. *Judgment of the court.*

WALTER S. CROSLEY
*v.*
UNITED STATES. } No. 22391.

JANUARY 5, 1903.

At a Court of Claims held in the city of Washington judgment was ordered to be entered as follows:

The court, on due consideration of the premises, finds for the claimant, and do order, adjudge, and decree that the claimant, Walter S. Crosley, do have and recover of and from the United States the sum of three hundred and ninety-four dollars. ($394.00.)

BY THE COURT.

16 V. *Application for and allowance of appeal.*

WALTER S. CROSLEY
*v.*
UNITED STATES. } No. 22391.

From the judgment rendered in the above-entitled cause on the 5th day of January, 1903, in favor of the claimant, the defendants, by their Attorney-General, on the 18th day of March, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
*Assistant Attorney-General.*

Filed March 18, 1903.
Order: Let the appeal be allowed.
July 2, 1903.

C. C. NOTT,
*Chief Justice.*

17 Court of Claims.

WALTER S. CROSLEY
*v.*
UNITED STATES. } No. 22391.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 8th day of July, A. D. 1903.

[SEAL.]

JOHN RANDOLPH,
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) File No., 19027. Court of Claims. Term No., 376. The United States, appellant, vs. Walter S. Crosley. Filed July 28th, 1903.

O